IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 327 OF 2004.

1. Freddy Mergulhao,
major, presently working
for Institute of Public
Assistance (Provedoria),
r/o Culvaddo, Salcete,
Goa.

2. Shri John Paul Fernandes,
major, retired Assistant
Accounts Officer,
Institute of Public Assistance
(Provedoria), Guirim, Bardez,
Goa. ... Petitioners.

VERSUS

1. State of Goa,
through Chief Secretary,
Government of Goa,
Secretariat, Panaji, Goa.

2. Deputy Superintendent of Police,
C.I.D. Crime Branch,
Panaji Police STation,
Panaji, Goa.

3. The Chief Judicial Magistrate,
Panaji, Goa.

4. The Director of Provedoria,
Institute of Public Assistance
(Provedoria), Mala, Panaji,
Goa. ... Respondents.

Smt. A.A. Agni, Advocate for the Petitioners.

Mr. S. Malyekar, Addl. Government Advocate for the Respondents.

CORAM: N.A. BRITTO, J.

Date: 19TH AUGUST, 2004.

ORAL JUDGMENT:

Rule. By consent heard forthwith.

2. The petitioners who are accused nos.1 and 2 in

C.C. No.220/94/A complain of denial of their right to speedy trial in the said case. They further complain that the prosecution in the said case has amounted to persecution.

3. The petitioners have been working as Cashier and Assistant Accounts Officer respectively in the Institute of Public Assistance (Provedoria). The said case was filed against them along with others on 22.11.94 under Sections 406, 477-A, 403 r/w 34 I.P.C.

4. The petitioners have stated that at one stage they did file an application on or about 11.1.99 to close the case based on the judgment of the Apex Court in the case of **Rajdeo Sharma v. State of Bihar** (A.I.R. 1998 S.C. 3281) but their application was dismissed on the ground that there was no presiding officer for the period from 24.3.98 to 25.6.99.

5. The petitioners have stated that thereafter disciplinary proceedings were initiated against them and they were suspended pending disciplinary inquiry and they were compelled to file a Civil Suit No.128/95/D for stay of the disciplinary proceedings and for revocation of the suspension order and although the disciplinary proceedings were stayed by the learned Civil Judge, S.D. by his Order dated

8.5.96 the prayer for revocation of the suspension order was rejected.

6. The petitioners have further stated that the suspension orders were subsequently revoked and thereafter the petitioners withdrew the said Suit by application dated 28.3.2000 which was allowed by Order of the learned Civil Judge S.D. dated 13.4.2000.

7. At the time of the hearing of arguments, Smt. Agni, the learned counsel on behalf of the petitioners, has submitted that the petitioners might have been responsible for seeking adjournments on about five occasions, but at least on twelve occasions it is the prosecution who sought adjournments from time to time and till date the examination of only three witnesses has been completed. It is the submission of Smt. Agni, the learned counsel,that the C.J.M. be directed to complete the trial of the said case expeditiously and within a period of three months or such time span as directed by this Court. Smt. Agni placed reliance on the cases of **Abdul Rehman Antulay v. R.S. Nayak and another** (A.I.R. 1992 S.C. 1701) and **P. Ramachandra Rao v. State of Karnataka** (2002) 4 S.C.C., 578.

8. A list of cases filed prior to C.C.

No.220/94/A was called for and it appears that there are about 15 cases filed prior to the case of the accused. However, I have not been able to understand as to how a case having No.279/93/A, which apparently was filed more than a decade back is still at the stage of appearance or for charge. Likewise another case bearing No.288/93/A which was again filed more than a decade back is still at the stage of appearance.

9. A faint attempt was made by Shri A.S. Malyekar, the learned Addl. Govt. Advocate appearing on behalf of the respondents, to object to the maintainability of this petition and the power of this court as regards issuing directions as prayed for on behalf of the petitioners.

10. However, the said attempt has got to be laid to rest. In the case of **P. Ramachandra Rao** (supra) which affirms all the propositions laid down in the case of **A.R. Antulay** (supra), the Hon'ble Supreme Court has observed that in appropriate cases, jurisdiction of the High Court under S.482 Cr.P.C. and Arts.226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions. What the Constitution Benches of the Hon. Supreme Court in the said two decisions have stated is

that it is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. In the case of P. Ramchandra Rao (supra) the Constitution Bench has held that the dictum in A.R. Antulay's case is correct and still holds the field and that the guidelines laid down therein are not exhaustive but only illustrative, as they are not intended to operate as hard and fast rules or to be applied like a straitjacket formula. Their applicability would depend on the fact situation of each case. It is difficult to foresee all situations and no generalization can be made. The Supreme Court reiterated the principle that fair, just and reasonable procedure is implicit in Art.21 of the Constitution and created a right in the accused to be tried speedily; the right to speedy trial flowing from Art.21 would encompass within its sweep all its stages including investigation, inquiry, trial, appeal, revision and retrial; who is responsible for the delay and what factors have contributed towards delay are relevant factors. Attendant circumstances, including nature of the offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on – what is called the systemic delays must be kept in view; each and every delay does not necessarily prejudice the accused

as some delays indeed work to his advantage. The Apex Court approved the view that where the Court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction as the case may be, shall be quashed. But this is not the only course open.The nature of the offence and other circumstances in a given case may be such that quashing of the proceedings may not be in the interest of justice and in such a case it is open to the Court to make such other appropriate order – including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded – as may be deemed just and equitable in the circumstances of the case. The Supreme Court observed that in every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time it is the duty of he Court to weigh all the circumstances of a given case before pronouncing upon the complaint (emphasis supplied).

11. As far as this case is concerned, it appears that although the charge sheet was filed on 22.11.94 it took almost a year for the learned J.M.F.C. to complete service on the accused and thereafter it took almost another year to frame charge against the

accused. Although it is understandable that the trial got delayed because there was no presiding officer from 10.9.96 to 24.3.98 as observed by the learned C.J.M. in the Order dated 11.2.2000, it appears that thereafter there have not been good reasons for the subsequent delay of the trial, to the extent it has been delayed. On 5th May, 1998 there were instructions given to the learned C.J.M. by the learned Sessions Judge to expedite the trial, but it appears that the said instructions were not taken in their proper perspective. Thereafter there have been instructions issued by the High Court vide Circular No. A(Spl.)3214/99/66/99 dated 15.1.99 for early disposal of old cases, but here again the said instructions, it appears have not been followed by the learned C.J.M. who, it appears is immune to any instructions given either by the learned Sessions Judge or by the High Court itself. This is evident from the fact that at times the case was adjourned because the learned C.J.M. was busy with his regular work. At other times no order was pronounced because the accused were absent. Since then, almost eight years have lapsed and what has only been done is that four witnesses have been examined i.e. one witness has been examined for every two years which have lapsed. This is certainly not a very satisfactory state of conducting the trial. The manner in which

the dates are being given does not show that the learned C.J.M. is in control of his file.

12. In my opinion, therefore, the petitioners would certainly be right in complaining that their right for a speedy trial is being denied to them and not only that, the prosecution against them is being made into a persecution. It is understandable that P.W.3 Ashok Desai may be otherwise a busy public servant, but the number of adjournments taken to complete his examination are certainly not justified. It was certainly the duty of the learned C.J.M. to have impressed upon the Public Prosecutor and the latter to impress upon P.W.3 Ashok the need of completing his evidence without any further delay. On behalf of the petitioners, though they are not the only accused in the case, a submission has been made that the accused would cooperate with the learned C.J.M. for completion of the trial at an early date.

13. Consequently, I am of the view, that directions are required to be issued to the learned C.J.M. to complete the trial of this case as early as possible and in any event before the expiry of one year from the date he receives a copy of this Order. As already stated, it is not known as to why the cases which have been filed more than a decade back are

shown pending for appearance, for charge, for production of surety, etc. As far as those cases are concerned, and in case the accused cannot be served, the learned C.J.M. is hereby directed to follow the instructions contained in the Criminal Manual. In case those cases are ready for trial, the learned C.J.M. is directed to complete the trial of those cases within a period of 18 months. Needless to observe, the learned C.J.M. is required to follow the provisions of Section 309 of the Code of Criminal Procedure 1973, whilst disposing the aforesaid cases and report compliance to this Court.

14. On the above terms, Rule is made absolute.

N.A. BRITTO, J.

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